



Office of
the Schools
Adjudicator

Determination

Case reference: REF4074

Referrer: Luton Borough Council

Admission authority: The Tennyson Learning Community for Tennyson Road Primary School, Luton

Date of decision: 18 August 2022

Determination

I have considered the admission arrangements for September 2022 and September 2023 for Tennyson Road Primary School, Luton in accordance with section 88I(5) of the School Standards and Framework Act 1998 and find that in relation to the matters set out in this determination, the arrangements do not conform with the requirements.

By virtue of section 88K(2) the adjudicator's decision is binding on the admission authority. The School Admissions Code requires the admission authority to revise its admission arrangements within two months of the date of the determination.

The referral

1. Under section 88H(2) of the School Standards and Framework Act 1998, (the Act), an objection has been referred to the Office of Schools Adjudicator (OSA) by Luton Borough Council (the LA, the referrer), about the admission arrangements (the arrangements) for Tennyson Road Primary School (the school), for September 2022 and September 2023. The date of the objection was 27 May 2022, which is after the deadline for objections to be made to either set of arrangements (15 May 2021, and 15 May 2022 respectively).

2. The referral related to the appropriateness of the school's arrangements in the light of a proposed separation of the two-site school into two schools in September 2022. The LA was concerned that the arrangements for 2022 did not provide arrangements for two separate schools (on the assumption that these would be necessary). I shall explain below

how the trust had acted in respect of admission arrangements for 2023, which was to determine two sets of arrangements. In making its referral concerning these arrangements, the LA was concerned that those which were relevant to the status quo of there being a single school nevertheless contained changes from the arrangements for 2022, and that these had not been the subject of the consultation concerning them which it considered should have taken place. The LA also stated that dates included in the arrangements for 2022 were incorrect, making them unclear in contravention of paragraph 14 of the Code, and that those for 2023 contain references both to a single school operating on two sites and to there being two separate schools, also making them unclear in contravention of paragraph 14 of the Code.

3. When the arrangements were brought to my attention, I considered that the following additional matters did not, or might not, conform with the requirements for admission arrangements concerning the arrangements which have been determined for 2022 and for 2023:

- (i) that as a single school, Tennyson Road Primary School has a single PAN for admissions to Year R and that therefore references which are made to a PAN of 30 at one site and of 60 at the other are incorrect, making the arrangements unclear, in contravention of paragraph 14 of the Code;
- (ii) that the sentence “Priority is not given within each criterion to children who meet other criteria” can be read to mean that children are only considered under the first oversubscription criterion relevant to them, which does not conform with the requirements concerning oversubscription criteria in paragraphs 1.6 to 1.8 of the Code, and
- (iii) that the statement “Parents can also request that their child attends part time until he/she reaches school age. Such requests should be made in writing to the headteacher after an offer of a place has been confirmed.” does not conform with the requirement set out in paragraph 2.17c) of the Code.

4. The parties to the case are the Tennyson Learning Community (the trust), Luton Borough Council and the school.

Jurisdiction

5. The terms of the Academy agreement between the trust and the Secretary of State for Education require that the admissions policy and arrangements for the academy school are in accordance with admissions law as it applies to maintained schools. These arrangements were determined under section 88C of the Act by the Tennyson Learning Community which is the admission authority for the school on 25 February 2021 and revised on 8 July 2021 (those for 2022), and on 13 January 2022 (those for 2023) on that basis.

6. The School Admissions Code (the Code) requires objections to admission arrangements for 2023 to be made to the Office of the Schools Adjudicator by 15 May 2022, and a year earlier for those for 2022. As each deadline was missed, the case cannot be treated as an objection. However, as the arrangements have been brought to my attention, I have decided to use the power conferred under section 88I(5) of the Act to consider whether the arrangements conform with the requirements relating to admission arrangements and I am treating the objection as a referral.

7. I have concluded that under section 88I(5) of the Act I do not have jurisdiction to consider the objection that the arrangements for 2023 contain a change that was introduced into them without prior consultation. That is because my jurisdiction under that section is limited to the arrangements themselves.

Procedure

8. In considering this matter I have had regard to all relevant legislation and the School Admissions Code (the Code).

9. The documents I have considered in reaching my decision include:

- a) the referrer's email of objection dated 27 May 2022 and subsequent correspondence;
- b) copies of the minutes of the meetings of the trust board at which the arrangements for both years were determined;
- c) a copy of the determined arrangements for both years;
- d) comments from the admission authority and the LA on the matters raised, supporting documents and subsequent correspondence.

10. I have also taken account of information received during a virtual meeting I convened on 22 July 2022. The meeting was attended by representatives of the LA, the school and the trust.

Background

11. The trust is a multi-academy trust consisting of two schools. Tennyson Road Primary School operates from two sites in Luton, and Hawthorn Park Community Primary School which is in Dunstable, is in the area of Central Bedfordshire Council. The trust has adopted the practice of determining a single set of arrangements in which the schools are referred to individually in places, for instance where the arrangements provide oversubscription criteria (although these criteria are the same for both schools), but which are otherwise general in nature.

12. The referrer's form explained that the LA understood that the trust was in correspondence with the Secretary of State concerning the proposed separation of

Tennyson Road Primary School into two schools on the separate sites which it currently occupies, from September 2022. The LA believed that the approach which had been adopted by the trust concerning the admission arrangements which it should determine in respect of the school in these circumstances was flawed, and that this had led to arrangements which were inappropriate in the way set out above. The LA said that it believed that the trust should have sought a variation to the existing admission arrangements for 2022 by approaching the Secretary of State, and that appropriate arrangements for 2023 should have been determined following a consultation on the changes that the reorganisation of the school into two schools would have necessitated.

13. When I wrote to the parties, I told them that as the LA had submitted an objection to both the 2022 and the 2023 arrangements after the relevant deadlines for such objections to be made to the adjudicator, the case could not be brought as an objection. I set out my jurisdiction under section 88I(5) to consider the arrangements and said that it was not possible for a complaint about the consultation which may or may not have preceded the determination of admission arrangements to be considered by the adjudicator under section 88I(5) of the Act.

14. The trust wrote to the adjudicator on 10 June 2022, saying that the arrangements for 2022 had been determined “ahead of any decision by the DfE” and so reflected the status quo. Those for 2023 were determined by the trust board on 13 January 2022 in two forms. The first was on the basis of the status quo, and the second, “in draft form” on the basis that the separation of the schools would have taken place in 2022. In response, the LA maintained its view that since the 2023 arrangements which reflect the status quo (a single school) are different from those for 2022, there should have been a consultation concerning them, and this had not taken place. It provided me with the information that it understood that the expectation was that one of the two sites on which the school operates (the “South site”) would be the successor school, retaining the DfE number of the existing Tennyson Road Primary School (and that the “North site” would become a new school). This is also reflected in the minutes of the trust board on 13 January 2022. The LA said that if that proved to be the case, then the trust would need to seek a variation to the arrangements of the existing school when it began operating only from the “South site”.

15. I said to the parties on 29 June 2022 that this was also my view, and that since the school which was to operate from the “North site” would at the same time have been created as a new school with no previous admission arrangements, it would then be necessary for the trust to determine admission arrangements for it for the first time. I also said that my jurisdiction extended only to a consideration of the admission arrangements that had been determined for the school in its present form, since no decision had been taken to effect its separation into two schools on the two sites. I therefore intended to consider the arrangements referred to above, those for 2022 and those for 2023 which were determined to reflect the status quo.

16. The trust informed the adjudicator on 7 July 2022 that the person with whom there had been correspondence on this matter had resigned, apparently leaving no records

behind, and that the CEO/Executive Headteacher had met the representative of the LA and had “adjusted the admission arrangements for Tennyson South and Tennyson North for the proposed de-amalgamation” and that “the new admission arrangements will be on the website today”. I took this to mean the arrangements for 2022, as I was not provided with a copy of the arrangements being referred to, and since I understood that the school believed that arrangements relevant to a de-merged school for 2023 had already been determined (in draft form) by the trust.

17. I wrote to the parties on 8 July 2022, making it clear that it was not possible for the arrangements for a school to be “adjusted” other than by the admission authority itself, also asking again to be provided with evidence of the determination of the arrangements for 2022, since this had not yet been provided to me. I offered to convene a meeting between the parties if this would prove helpful in enabling those involved to move forward on the basis of my communication of 29 June 2022. Both parties said they would find a meeting helpful.

18. The arrangements for 2022 were determined originally on 25 February 2021 and were amended on 8 July 2021 in order to make changes necessitated by the introduction of the School Admissions Code 2021 (for the avoidance of doubt such amendments do not require consultation or the approval of the Secretary of State) . The minutes of the latter meeting were provided to me by the trust on 12 July 2022, and the requested meeting took place on 22 July 2022. At that meeting it was accepted that the trust should now await my determination concerning the arrangements for both years for the school in its present form, before considering its admission arrangements further in the light of any decision about de-merger. I was also informed by the trust at the meeting that it had decided to ask the Secretary of State not to progress the school’s proposed separation into two schools for September 2022, but that this was still likely to take place in September 2023.

19. In order that the trust should have the opportunity to comment on the matters which I will go on to consider in this determination, I wrote to the parties on 25 July 2022 setting these out – both those raised by the referrer and those which I have considered might be further violations of the requirements concerning admission arrangements. The trust confirmed that it had no comment to make concerning any of the matters raised, and the LA referred to one of the matters, as I shall explain below.

Consideration of Case

20. I shall consider first the matters raised by the referrer in each set of arrangements separately and then to the further matters of concern, which are common to both.

The arrangements for 2022

21. The school operates on two sites, and it is for the headteacher of the school to decide how to organise the teaching arrangements which apply, including in this case at which of the two sites each child will be taught. The arrangements refer to this situation, and to the fact that parents must express a single preference for a place at the school and that

the school will subsequently inform those offered a place which of the two sites their child will attend. In doing so, the arrangements state: “In June 2020 the School will inform parents of children allocated a place from September 2020, which school site their child will attend (sic)”. Clearly, these dates are incorrect with respect to admissions in September 2022. Although these dates have now passed, the error must have made the arrangements unclear to parents reading them and therefore in contravention of the requirement of paragraph 14 of the Code that arrangements be clear. It is the case that the arrangements are still relevant to admissions to the school until at least December 2022.

The arrangements for September 2023

22. Although the arrangements which were determined to reflect the status quo of a single school are clear in stating at the outset that “Tennyson Road Primary School is based on two campuses”, they nevertheless anticipate the separation of the two sites into two schools. The arrangements make two key references to a future in which this separation will have happened, and therefore introduce changes to the arrangements which had applied for 2022 (without, as the LA has complained, there having been any relevant consultation prior to this determination). I have already said that I have no jurisdiction to consider the matter of consultation because I am considering the arrangements under section 88I(5) of the Act.

23. The arrangements state the following:

“Until [date], the Tennyson Road campuses operated as one school with places allocated to a shared catchment area. These arrangements for allocating a place at either campus are unchanged for the present, although they constitute two preferences, not one, for parents applying for a school place. Each school has a published admission number (PAN) and over-subscription criteria.”

“Parents should state Tennyson Road Primary School, North and/or South Site as separate preferences. There is no obligation for parents to express a preference for both schools but if they do, this will count as two preferences.”

These statements, in the context of a single school still operating on two sites, are plainly confusing to any reader, since they refer to a different situation, and one which does not yet exist. The arrangements are unclear and fail to comply with paragraph 14 of the Code.

Other matters in the arrangements for 2022 and for 2023

24. Both sets of arrangements refer to Tennyson Road Primary School (South) having a PAN of 30, and to Tennyson Road Primary School (North) as having a PAN of 60. When the Headteacher decides on the way in which teaching will be organised across the school, it may well be that the 90 children admitted to Year R will be divided into one group of 30 at one site, and another group of 60 at the other. That is an internal matter for the school. However, as a single school, there is a single PAN for each relevant year group (Year R in this case), not more than one. References to there being two PANs for the same year group

are therefore misleading and make the arrangements unclear, in contravention of paragraph 14 of the Code.

25. Both sets of arrangements contain the phrase “Priority is not given within each criterion to children who meet other criteria.” At the meeting which I held with the parties, I explained that this could be read to mean that children are only considered under the first oversubscription relevant to them, and that this would have an effect if there were limited places available under a given oversubscription criterion. Paragraphs 1.6 to 1.8 of the Code set out the requirements concerning the oversubscription criteria which all admission arrangements for schools must contain, and how these are to be applied. Taken together, these paragraphs make it clear that oversubscription criteria operate sequentially, and that each applies to all children seeking a place when there are too few places to satisfy all such requests. So, all oversubscription criteria are relevant to all children who have applied but who have not yet been allocated a place because of a higher priority oversubscription criterion which applies to them.

26. The LA wrote to me asking that I bear in mind when considering this matter that in their own experience some parents have previously taken the view that if their child meets the requirements of more than one oversubscription criterion, they should be given priority for admission over another child being considered under the same oversubscription criterion to whom no other oversubscription criterion is relevant. This is of course to misunderstand how oversubscription criteria are intended to be applied - that is, separately and sequentially. It is possible to imagine oversubscription criteria being devised which did apply a tie-breaker of the relevance of the next oversubscription criterion to separate otherwise equally qualified children, but they would need to spell this out explicitly. In the absence of any such intention on the part of the admission authority however, it should be clear from what is stated that there is no connection of this sort, and the wording adopted in the arrangements could be more helpful, for instance by saying something like “each oversubscription criterion operates separately”, which when read with the subsequent sentence in the arrangements that “Within each criterion applicants are ranked according to the shortest distance, measured from the front main door of the school and the pupil’s home address” does make matter clear, in my view. As determined however, the wording is less than clear and the arrangements fail to comply with paragraph 14 of the Code.

27. Both sets of arrangements contain the following:

“Parents can also request that their child attends part-time until he/she reaches school age. Such requests should be made in writing to the headteacher after an offer of a place has been confirmed.”

Paragraph 2.17c) of the Code has the following to say:

“The [admission] authority **must** make it clear in their arrangements that where they have offered a child a place at the school:

c) where the parents wish, children may attend part-time until later in the school year but not beyond the point at which they reach compulsory school age.”

The wording of the Code confers a right on parents to have their child attend on a part-time basis if they so wish, which is not the same as being able to request this of the school. The arrangements do not make this right clear, as paragraph 2.17c) of the Code requires them to do.

Summary of Findings

28. I have explained why I have decided that the arrangements for 2022 are unclear in containing inaccurate dates, and why those for 2023 are unclear because they make references to a future anticipated situation in which the school will no longer operate on two sites but will have become two separate schools.

29. I have also set out why each set of arrangements is unclear in making references to there being two PANs and not one, and in containing wording about the application of oversubscription criteria which could be misleading. The arrangements for both years also fail to make a statement concerning part-time attendance which meets the requirements of paragraph 2.17c) of the Code.

30. I note in passing that in spite of my words of caution to the trust about the authority which exists for the determination of admission arrangements, when I visited the school's website on 16 August 2022 I found there a further set of what were termed "revised" admission arrangements for 2023 but which said that they applied from September 2022, the point at which the school had, these arrangements said, become two separate schools. My understanding, as I have said, is that this possibility has been postponed until at least September 2023. Until there is confirmation of that event, the trust is required to have in place determined admission arrangements which comply with the requirements concerning them for the school in its present form, for both 2022 and 2023, and must now revise the arrangements which it has determined in the light of this determination about them.

31. I hope it will be helpful to the trust as admission authority if I reiterate my view that if in the future the reorganisation of the school into two schools is confirmed, then it would be necessary for it to request that the arrangements for the successor school be varied from the relevant date, and for it to determine the arrangements for the newly established school from that same date.

Determination

32. I have considered the admission arrangements for September 2022 and September 2023 for Tennyson Road Primary School, Luton in accordance with section 88I(5) of the School Standards and Framework Act 1998 and find that in relation to the matters set out in this determination the arrangements do not conform with the requirements.

33. By virtue of section 88K(2) the adjudicator's decision is binding on the admission authority. The School Admissions Code requires the admission authority to revise its admission arrangements within two months of the date of the determination.

Dated: 18 August 2022

Signed:

Schools Adjudicator: Dr Bryan Slater